

Recorded at the request of:  
City of Alameda

When recorded, return to:  
City of Alameda  
Community Development Department  
2263 Santa Clara Avenue, Rm 190  
Alameda, CA 94501

## DRAFT AGREEMENT CONCERNING PUBLIC ART

THIS AGREEMENT is made \_\_\_\_\_, 20\_\_\_\_\_ between the City of Alameda, a municipal corporation ("City") and \_\_\_\_\_ ("Property Owner") concerning the installation and maintenance of a public art project on certain property owned by Property Owner.

### Recitals

- A. Property Owner is the owner of certain real property, commonly known as \_\_\_\_\_, and more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("the Property").
- B. \_\_\_\_\_ ("Artist") has received from the City's Public Art Commission approval of a public art project, depicted generally on Exhibit B, attached hereto and incorporated herein by reference ("Public Art"), the funding of which has been provided by the City. As provided in this Agreement, City will own the Public Art, the Property Owner will have the Public Art installed on the Property and Property Owner will maintain the Public Art.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Installation of Public Art. Property Owner shall install, or cause to be installed, the Public Art on the Property in a location approved by the City.
2. Ownership of Public Art. City shall own the Public Art for its lifetime as those matters are established in the long term Maintenance Plan, approved by the Public Art Commission and as set forth in Exhibit C attached hereto and incorporated herein by reference ("Maintenance Plan"), which takes into account the recommendations of the Artist as to the on-going and long term maintenance of the Public Art. At the end of the Public Art's lifetime, (a) if the City and the Property Owner agree that the Public Art should nevertheless remain on the Property, the parties will negotiate terms acceptable to both parties as the length of time the Public Art is to remain on the Property and the financial responsibility for its ongoing maintenance. (b) if the City and the Property Owner are not able to negotiate such terms, City may elect to continue to own the Public Art and remove, if practical and feasible, the Public Art to a different location at the City's sole expense or (c) if the City elects not to retain ownership of the Public Art, the Property Owner may remove the Public Art at the Property Owner's sole expense consistent with the California Preservation of Works of Art Act, the Federal Visual Artists' Rights Act and any other relevant law applicable to the removal of Public Art.
3. Changes to Approved Public Art. Whether before or after the Public Art is installed, Property Owner shall submit to the City (and to the Artist unless the Artist is proposing a change to the Public Art) for further review and approval drawings or other appropriate media for any significant changes in the design, color, size, material, utility or support requirements,

texture, or location of the site or of the Public Art. A significant change includes any change that materially affects the concept, appearance, texture, installation, scheduling, site preparation or maintenance of the Public Art, as represented in the approved design.

Progress Reports. If installation of the Public Art is to occur over a period longer than two months, Property Owner shall provide to City monthly progress reports on the status of the installation.

4. Maintenance of Public Art. During the lifetime of the Public Art, the following maintenance provisions shall apply. Property Owner shall (a) maintain the Public Art on a regular basis, (b) repair the Public Art when necessary, (c) replace the Public Art when it is damaged beyond repair, destroyed or stolen and (d) establish a source of funding to maintain the Public Art for its lifetime as set forth in the Maintenance Plan. If Property Owner unreasonably fails to maintain, repair or replace the Public Art, City shall have the right, but not the obligation, to maintain, repair, replace or remove from the Property the Public Art. Property Owner shall grant the City an easement on the Property, in a form and with a legal description acceptable to the City, in order for the City to maintain, repair or replace the Public Art, should such become necessary. Property Owner shall be responsible for all costs incurred by City to maintain, repair or replace the Public Art and shall release, indemnify, defend and hold harmless City, its employees and agents, from any claims, damages, suits, costs, liabilities or actions of any kind resulting from City's maintenance, repair or replacement of the Public Art.
5. City's Right to Use Photos of Public Art. City shall have the right to use any photographs, slides, models, printed materials, etc. of the Public Art for non-commercial purposes, such as promotional and marketing purposes, and to use such materials in various media, including, but not limited to newspapers, other publications, and the City's website..
6. Removal of Public Art. If Property Owner wishes to remove the Public Art during its lifetime, Property Owner shall notify City and City, through its Public Art Commission or other City Council appointed Board or Commission if the Public Art Commission has been dissolved or is no longer an active City Commission, shall have the right to approve removal of the Public Art, consistent with the California Preservation of Works of Art Act, the Federal Visual Artists' Rights Act and any other relevant law. If the Public Art Commission approves the removal of the Public Art, Property Owner shall bear the entire cost to remove the Public Art to a location approved by the City.
7. Agreement Runs With the Land. This Agreement shall be recorded in Alameda County, run with the land and be binding on the Property Owner, its successors and assigns.
8. Amendments in Writing. This Agreement may be modified or amended only in writing, signed by both parties or their successors in interest.
9. Interpretation of Agreement, Disputes, Attorneys' Fees. The laws of the State of California shall govern the interpretation of this Agreement. Any dispute concerning this Agreement shall be adjudicated in the courts of Alameda County, California. In any litigation, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

10. Notices. All notices, requests and other communications shall be provided in writing and delivered by personal service, by first class mail or by express delivery services and addressed to the City's Community Development Director, 2263 Santa Clara Avenue, Room 190 Alameda, CA 94501 and to \_\_\_\_\_.
11. Prior Agreements Superseded. This Agreement incorporates and includes all prior negotiations and understandings of the parties and there are no commitments or understandings concerning the subject matter of this Agreement that are not contained in this Agreement.
12. Authority to Sign. The undersigned represent they are authorized to sign this Agreement.

IN WITNESS THEREOF, the parties have signed this Agreement to be signed as of the date set forth above.

CITY OF ALAMEDA

PROPERTY OWNER

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
  
\_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney